



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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KARYN E. POLITO
LIEUTENANT GOVERNOR

KATHLEEN A. THEOHARIDES
SECRETARY OF ENERGY
AND ENVIRONMENTAL AFFAIRS

ONE SOUTH STATION
BOSTON, MA 02110
(617) 305-3500

MATTHEW H. NELSON
CHAIR

ROBERT E. HAYDEN
COMMISSIONER

CECILE M. FRASER
COMMISSIONER

November 21, 2019

VIA ELECTRONIC AND FIRST-CLASS MAIL

Shonda D. Green, Secretary
Department of Telecommunications & Cable
1000 Washington St., Suite 600
Boston, MA 02118-6500

RE: D.T.C. 18-3 – Telecommunications Carrier Accounting Practices and
Recordkeeping

Dear Ms. Green:

On June 25, 2018, due to the Federal Communications Commission's ("FCC") modification of the federal reporting and accounting requirements for incumbent local exchange carriers ("ILECs") subject to price cap regulation (i.e., Verizon Massachusetts), the Department of Telecommunications and Cable ("DTC") issued an Order Opening a Notice of Inquiry ("Order"). The Order seeks comment on the data, accounting, and reporting requirements necessary to calculate pole attachment rates for poles owned by telecommunications carriers in Massachusetts and any impacts resulting from the federal changes. See Order at 1-2; In re Comprehensive Review of the Part 32 Unif. Sys. Of Accounts, 32 FCC Rcd. 1735 (2017) ("Accounting Order"); In re Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, 28 FCC Rcd. 7627 (2013) ("USTelecom").

DTC's Order focuses on the federal actions applicable to price cap ILECs that (1) eliminated the use of the FCC Form M, (2) permitted carriers to elect to use generally accepted accounting principles ("GAAP") instead of the Uniform System of Accounts ("USOA") for setting pole attachment rates in states that do not assert jurisdiction over pole attachments ("federal-default states"), and (3) eliminated USOA-based pole reporting data at the

federal level through the FCC's Automated Reporting Management Information System ("ARMIS") for states like Massachusetts, which have jurisdiction over pole attachments. The pole attachment regulations shared by DTC and DPU currently provide that telecommunications pole attachment and conduit rate data be derived from the Form M. 220 CMR 45.04(2)(d); A-R Cable Servs. Inc., et al. v. Mass. Elec. Co., D.T.E. 98-52, at 7 (1998) ("A-R Cable").

On October 22, 2019, DTC issued a further request for comment concerning ways to (1) identify how the data items reported in the FCC's ARMIS Report 43-01 correspond to the rate formula ("Massachusetts Formula") established in Cablevision of Boston Co. et al. v. Boston Edison Co., D.P.U./D.T.E. 97-82, at 17-19 (1998) ("Cablevision"); (2) compare the FCC ARMIS Report 43-01 and the former FCC Form M with regard to calculation of pole attachment rates pursuant to the Massachusetts Formula; and (3) identify current pole attachment rates and then calculate the rates using data derived from both GAAP- and USOA-based inputs. DPU repeats that because Massachusetts has elected to regulate pole, duct, and conduit attachments, the FCC's accounting changes do not apply to the Commonwealth's existing pole, duct, and conduit attachment requirements. See DPU Comments at 2-3; DPU Reply Comments at 1-2.

Because the existing Massachusetts Formula was developed based on account information maintained consistent with USOA, ILECs like Verizon, as well as Electric Distribution Companies ("EDCs") and municipal lighting plants, remain subject to USOA-based reporting in Massachusetts for purposes of calculating pole attachment and conduit rates unless and until the DTC and the DPU order otherwise. See DPU Comments at 4; DPU Reply at 2; see also 220 CMR 45.04(2)(d); Cablevision at 18-19; A-R Cable at 7-8; Greater Media, Inc. et al. v. New England Telephone & Telegraph Co., D.P.U. 91-218, at 13 n.11, 33-34 (1992) ("Greater Media"); Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, D.T.E. 01-31-Phase II, Verizon AltReg Plan at 3, ¶ M (approved June 6, 2003) ("Alt-Reg Plan approval") (mandating that Verizon remain subject to the requirements under Greater Media unless ordered otherwise). Verizon's suggestion that pole attachment rates can be calculated based upon which regulated entity owns the pole or conduit is ill-advised and could foster arbitrage by regulated entities and those seeking to attach to poles, ducts, and conduit.

In accordance with Massachusetts regulatory requirements, pole and conduit rates established using the Massachusetts Formula derive from publicly-available data. A-R Cable at 7; Cablevision at 19. Because the FCC no longer requires price cap ILECs such as Verizon to make their data public for states like Massachusetts and also confirmed that such states may exercise their regulatory authority to require carriers to file data at the state level, the continued public availability of Massachusetts pole and conduit data requires further action by DTC. USTelecom, 28 FCC Rcd. at 7676; Qwest, 18483 FCC Rcd. at 18491. DPU therefore urges DTC to exercise its regulatory authority to update the reporting requirements involving pole attachment and conduit data for entities subject to DTC's jurisdiction.

In consideration of the FCC's actions, we recommend that, at a minimum, DTC revise the form prescribed for annual returns submitted by ILECs to incorporate USOA-based pole attachment and conduit data and to make that data publicly-available on its website.

M.G.L. c. 159, §§ 31, 32; Accounting Requirements and Annual Returns, D.P.U. 4940, Order (April 24, 1947). A copy of the 1947 Order in D.P.U. 4940 is attached. As DPU stated last year, Massachusetts pole owners subject to the DPU's jurisdiction submit annual returns on forms prescribed by DPU that rely on USOA-based data, which is used to derive their pole attachment and conduit rates. See DPU Reply at 4 n.6; M.G.L. c. 164, §§ 53, 81, 83; M.G.L. c. 165, § 2; 220 CMR 51.00 et seq.; 220 CMR 79.02, 79.04; D.P.U. 4240-62-A Order (January 10, 1962).

Those annual returns are publicly available on DPU's website in their entirety. Requiring Verizon and other ILECs to submit annual returns that include pole attachment and conduit data based on USOA accounting will be consistent with their historic accounting and reporting requirements at the state level and eliminate uncertainty over their obligation to comply with the Massachusetts Formula and well-established precedent in Greater Media, A-R Cable, Cablevision, and Verizon's Alt-Reg Plan approval.

In addition, DPU would support a DTC requirement that ILECs report two versions of pole and conduit data utilizing both USOA- and GAAP-based inputs if Verizon insists on utilizing GAAP-based inputs. This would provide consistent, accessible, and reviewable data that can be used as a basis for both agencies to review at a future date to determine whether the Massachusetts Formula should be revised to permit ILECs like Verizon to only rely on GAAP-based inputs, and to also allow the agencies to track potential impacts to pole attachment and conduit rates. This approach would be in line with options presented to price cap ILECs by the FCC involving pole attachment rates to the extent that those ILECs elected GAAP accounting, and would correspond to the historic accounting requirements imposed on Verizon and its predecessors in Massachusetts. See M.G.L. c. 159, § 31; D.P.U. 4940, Order (April 24, 1947); Accounting Order, 32 FCC Rcd. at 1746-1747.

With respect to comparisons between FCC ARMIS Report 43-01, the former FCC Form M, and the form utilized by EDCs in reporting pole attachment rates, DPU makes the following observations. As noted by Verizon, ARMIS reporting replaced the Form M. Verizon Reply at 9. This occurred decades ago, and Massachusetts attachers have relied on the data reported by Verizon through the FCC ARMIS Report 43-01 for many years. See In re Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications, 12 FCC Rcd. 8071, 8075 (1997).

The simplest approach for DTC to adopt without disrupting the existing framework may be to prescribe a Massachusetts-specific form attached to price cap ILECs' annual returns that largely mirrors the FCC's ARMIS form. In addition, this approach has value because the FCC ARMIS Report 43-01 incorporates conduit data, whereas the form utilized in Cablevision and provided as an attachment to DTC's further inquiry does not.

To ensure consistency in pole attachment rates in Massachusetts and the public availability of USOA-based data, DPU urges DTC to confirm the reporting requirements currently applicable to ILECs in Massachusetts and to clarify that Verizon remains subject to current Massachusetts requirements with respect to pole, duct, and conduit attachments, especially the maintenance of pole and conduit account information consistent with the USOA.

Further, to ensure USOA-based pole and conduit data at the state level remain publicly available, DPU recommends that DTC, at a minimum, prescribe the form of Verizon's annual report to include USOA accounts and procedures.

DPU respectfully requests a one-week extension until December 19, 2019, to submit reply comments. Due to the Thanksgiving holiday, key DPU personnel will be unavailable during the week of November 25, 2019. Thank you for considering these comments.

Sincerely,

/s/

Shane Early
General Counsel

Enc.

cc: Matthew H. Nelson, Chair, DPU
Sean Carroll, General Counsel, DTC